IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4317 OF 2004

Suresh Yashwant Dalvi..... Petitioner.

Versus

The State of Maharashtra & Ors. ..... Respondents.

Mr. S. P. Kanuga for the Petitioner.

Mr. M. H. Solkar,AGP for Respondent Nos.1 & 2.

Mr. R. S. Desai for Respondent No.3.

CORAM : S. A. BOBDE, J.

DATED : 18TH MARCH, 2005.

P.C.:

Rule.

2. Learned Counsel appearing for respondent Nos.1 and 2 and the learned Counsel appearing for respondent No.3, waive service of rule. By consent, Rule made returnable forthwith and taken up for final disposal.

3. The petitioner is aggrieved by the order passed under Section 78 of the Maharashtra Co-operative

Societies Act, 1960 declaring him to be a defaulter under Section 73FF(1)(d). Section 73FF(1)(d) disqualifies a person from being a member of a committee in case he defaults on the payment of any instalment of a loan taken by him. Apparently, the section contemplates a wilful default and may not include an unintentional default of the kind pleaded in the present case. I do not propose to decide this point here.

4. The petitioner has, been disqualified on the ground that he had obtained a loan from Bhudargad Nagari Co-operative Credit Society Limited and had not repaid the amount and was therefore a defaulter on the date of the nomination i.e. on 29th November, 2002. Mr.Kanuga, learned Counsel for the petitioner, submits that the petitioner could never have been treated as a defaulter in view of the letter dated 2nd September, 2002, Exhibit "F" Collectively to the petition, addressed by the petitioner to the Branch Manager, Bhudargad Urban Co-operative Credit Society Limited by which he had requested the Branch Manager to credit the amount of certain fixed deposits of his relatives and his Society against loan taken by him and thereafter to close the loan account.

5. In short, the submission is that having done so on 2nd September, 2002 and thereby having clearly intended and provided for clearing the dues well before the nomination, the petitioner could not have been treated as defaulter.

6. It appears from a letter dated 16th June, 2003 that the Divisional Joint Registrar had written to the Branch Manager, Bhudargad Urban Co-operative Credit Society Limited asking whether such a letter has been written by the petitioner. It is not clear what the response to the letter was. In any case whether such a letter was written by the petitioner has not been adverted to either by the original authority or by the appellate authority. Learned Counsel for the respondents doubts the authenticity of such a letter. In fact the letter appears to be in existence and has been produced by the learned Asstt. Government Pleader on a direction by this Court. However, it would not be appropriate to comment on the authenticity or the genuineness of this letter.

7. In the circumstances, I consider it appropriate in the interest of justice to set aside the impugned

order and remand the matter back to the Divisional Joint registrar, Co-operative Societies, Konkan Division, New Bombay for a fresh decision in accordance with law after taking into account the said letter and after giving opportunity of hearing to both the parties. He is requested to hear and decide the matter within a period of four months from the receipt of the writ of the order from this Court. All contentions of both the parties are kept open.

8. Rule made absolute in the above terms. This petition is, accordingly, disposed of. No order as to costs.

Sd/-

(**S. A. BOBDE, J.**)